



Department
for Education

Consultation on proposals for New Fair Deal and increases in contributions for members of the Teachers' Pension Scheme (TPS) in 2014-15

Government response

March 2014

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Introduction

1. This document sets out the responses received following the consultation launched in November 2013 on New Fair Deal and increases to contributions for members of the Teachers' Pension Scheme (TPS) for April 2014 to March 2015.

Scope of the Consultation

2. The purpose of the consultation was to seek views and evidence on the Department's approach to introducing New Fair Deal arrangements into the TPS and the arrangements for employee contributions rates for 2014-15 (year 3 contributions). To assist with this, the Department set out specific questions on which it welcomed responses, although consultees were invited to respond on any aspect of the proposals.
3. The consultation document also contained information on amendments to the scheme that are required as a consequence of the introduction of the Marriage (Same Sex Couples) Act 2013.
4. The responses reported in this document relate to the consultation on New Fair Deal and the contribution increases in 2014-15 only.

Policy Issue 1 – New Fair Deal

Background

5. Fair Deal is a non-statutory policy, issued by Her Majesty's Treasury (HMT), setting out how pensions are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services.
6. "Staff Transfers from Central Government: A Fair Deal for Staff Pensions", was published by HMT in June 1999, and introduced Fair Deal. (A further guidance note was issued in June 2004.) The approach taken was that where staff were compulsorily transferred from the public sector, their new employer was to arrange for access to an occupational pension scheme which was broadly comparable with the public service pension scheme they were leaving; this protection extended to subsequent compulsory transfers.

Proposal

7. The Government announced on 4 July 2012 that Fair Deal was to be reformed. The new policy proposal was to extend access to public service pensions. It would apply to staff moved from the public sector to an independent contractor

by way of a compulsory transfer (i.e. a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)). Such staff will continue to be members of the public service pension scheme they were in immediately prior to the transfer, and should remain in that scheme, under the same terms as other members, for both initial and subsequent TUPE transfers.

8. The revised Fair Deal policy has been subject to consultation. HMT's response to the Fair Deal policy consultation can be found [here](#). Guidance published in October 2013 (available [here](#)) has been issued by HMT and the Department has considered how to implement the arrangements whilst considering how they can be managed and controlled so as not to expose the scheme to financial risk.

Implementation

9. Access to the TPS needs to be expanded to allow a previously excluded type of employer to have access in accordance with the New Fair Deal guidance provided by HMT. This is intended to allow individual members to continue to have access to the TPS while they remain employed on the out-sourced contract, and this access may also continue following any subsequent compulsory transfers(s), so long as it is in respect of that same public service contract.
10. In all cases it is proposed that the preference will be for the new employer to provide for transferring staff to retain access to the TPS. There may be exceptional circumstances where there are special reasons for not providing continued access to the TPS for employers and these should be discussed with the scheme administrators and the Department. If this is the case, then the previous Fair Deal Guidance will continue to apply, requiring employees to be provided with access to a broadly comparable scheme.
11. If neither of these two options is available, the proposal under the new guidance will be that the outsourcing employer considers whether compensation should be offered to transferring staff – this must be done in consultation with staff or staff representatives. Actuarial advice would need to be taken on the calculation of any compensation in these exceptional circumstances, and bulk transfer terms may also be considered.

Participation Agreement

12. The Teachers' Pensions Regulations 2010 (TPR), which govern TPS, will be amended to provide for continued access to the scheme for transferring staff. This continued access will also be dependent upon the participating body and the contracting authority signing a Participation Agreement, and fulfilling any obligations under the Participation Agreement and/or the TPS, e.g. providing

information on transferring staff (see below). Once the scheme administrator, on behalf of the Secretary of State, is satisfied that these obligations have been completed, the scheme administrator will confirm access to the scheme. The amendments to the TPR will require that this process will be completed before the proposed transfer date of the staff, although it proposed that the regulations will be amended to provide that the Secretary of State may extend that deadline.

13. The Participation Agreement will be provided by the Secretary of State and will set out the obligations of the provider and the contracting authority, in addition to those which are required under the regulations by virtue of the provider being admitted as an employer. A model Participation Agreement will be published on the Teachers Pensions' website.
14. It is proposed that the TPR will be amended to require that contractors should auto-enrol into the TPS all eligible staff, including those that have previously opted out, on the first day of the new contract. This will establish entitlement to participate in the scheme, and individuals are at liberty to opt out again after this. From this point onwards the over-riding legislation in respect of automatic enrolment will come into effect as it does for all other members to the scheme.
15. The Participation Agreement will require the outsourcing employer to provide the scheme administrators with the details of individuals transferring to the new employer who will retain eligibility for membership of the TPS.

Requirement for a bond, guarantee or Indemnity

16. Contractors will be expected to comply with the Participation Agreement. However, It is proposed to amend the regulations so that where an employer has failed to fulfill its obligations, or where there are concerns that an employer may not fulfill their obligations, the Department may require the employer to support their application with a bond, guarantee or indemnity, which will provide financial reassurance to the scheme, especially in respect of member and employer contributions.

Policy 1 Consultation questions

Question 1: Do you agree with the Department's proposed method for legislating to accommodate the New Fair Deal Guidance?

Question 2: Do you agree that the proposed wording of the Participation Agreement will help to ensure that new employers in the TPS will fulfill their obligations?

Question 3: Do you agree that the proposal to allow the Department to require a bond, indemnity or guarantee is a proportionate and effective mechanism for protecting existing scheme members and employers?

Question 4: Do you consider that there are equality issues that will result in any protected groups being disproportionately affected by the implementation of New Fair Deal into the TPS? If so, what do you consider to be the disproportionate effect?

Consultation responses

17. Although 47 responses were received in respect of the consultation only 10 specifically responded to the New Fair Deal questions, and several chose not to answer some or all of the specific questions. Many of the remainder simply chose to raise objections to wider reforms that are taking place.
18. The majority of responses were from teacher unions (7), although two employer organisations, representing the Higher & Further Education sector, and one university also responded.
19. In respect of Question 1, half the respondents agreed with the Department's proposed method for legislating to accommodate New Fair Deal arrangements, two did not agree, one was not sure and two gave no response.
20. In respect of Question 2 seven respondents agreed that the proposed wording of the Participation Agreement will help to ensure that new employers in the TPS will fulfill their obligations. None of the respondents disagreed, one was not sure and two gave no response. Two respondents made suggestions regarding improving the clarity of the wording, and these will be included into an updated Participation Agreement template.
21. In respect of Question 3, half the respondents agreed that the proposal to allow the Department to require a bond, indemnity or guarantee is a proportionate and effective mechanism for protecting existing scheme members and employers. One respondent disagreed, two were not sure and two gave no response.
22. In respect of Question 4, one respondent considered that there were equality issues that would result in protected groups being disproportionately affected by the implementation of New Fair Deal into the TPS. Three did not consider there to be any equality issues, three were not sure and three did not respond to the question.
23. Some respondents raised concerns that the position of higher and further education (HE/FE) establishments was not made clear in that reference had been made to Her Majesty's Treasury's (HMT) consultation and guidance on that and HMT had yet to publish its consultation response.
24. By and large the union respondents felt that the New Fair Deal arrangements should be applied universally, so that all members who currently work in the HE/FE sector would be covered, but employer respondents felt that as HE institutions were not subject to Old Fair Deal arrangements, they should be able to choose whether to apply the new arrangements. They felt that as the

guidance is not statutory and applies only to certain public sector bodies, it should not be mandatory within the HE/FE sector.

25. Some respondents also raised the issue that New Fair Deal arrangements only apply to staff that are moved from the public sector to a private sector employer by way of a compulsory transfer (i.e. a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)). They pointed out that access to the scheme will not be extended to new staff taken on after the start of the new contract - this would lead to a “two-tier” workforce, in which some were eligible for membership of the scheme and some were not.

The Government’s response

26. The majority of responses were broadly supportive of the proposals to accommodate the New Fair Deal arrangements into the TPS. The areas of concern that were raised are around the extension of the policy to the HE/FE sector and opinions are polarised on this subject depending upon whether the respondent represented employees or employers.
27. The Department recognises that there are concerns regarding whether New Fair Deal will apply in the HE/FE sector. However, that issue has been the subject of a separate consultation by HMT and HMT’s guidance makes clear that these sectors are not required to apply NFD guidance, although they may do so, if they wish. The Department considers that the discussions and consultation that took place to develop this guidance fully explored this.
28. The position taken by HMT is reflected in the TPS arrangements as these will facilitate those policy decisions. New Fair Deal will not be mandatory in the HE/FE sector but employers will be able to elect to apply the arrangements. HMT have also suggested a review after two year to re-consider the issue against numbers of HE/FE institutions that have elected to participate.

Next steps

29. To support the introduction of the arrangements a communications strategy will be developed that will include the publication of guidance and a model participation agreement onto TP’s website. The model participation agreement will be amended to reflect suggestions received during the consultation process, and further review by the Department.
30. Appropriate amendments will be made to the Teachers’ Pensions Regulations 2010 to give the proposed changes legal effect on 1 April 2014. The necessary provisions will also be incorporated into the arrangements for the reformed TPS, which will come into force in April 2015.

Policy Issue 2 – Increase to member contribution rates

Background

31. Providing good quality pensions is becoming more challenging given increasing life expectancy. That is why the Government set up the Independent Public Service Pensions Commission (IPSPC) chaired by Lord Hutton to make recommendations on how such pensions can be made sustainable and affordable, whilst remaining fair to the workforce and the tax payer.
32. The IPSPC, as part of its review, produced an interim report considered “the case for delivering savings on public service pensions within the spending review period - consistent with the Government’s commitment to protect those on low incomes - to contribute towards the reduction of the structural deficit.” In his interim report of 7 October 2010, Lord Hutton recommended that increased longevity and the imbalance between employer and employee contributions are strong reasons to make short-term changes to pension contributions pending a more fundamental redesign of the schemes.
33. The Terms of Reference, Interim Report (dated Oct 2010) and the Final Report (dated March 2011) can be found [here](#).
34. On 19 July 2011 the Chief Secretary to the Treasury (CST) set out the principles that would apply to increases in contributions for members of unfunded public service pension schemes, including the Teachers’ Pension Scheme (TPS). The total overall savings are £2.8 billion per annum across the public service pension schemes by 2014-15. These changes equate to an average 3.2 percentage point contribution increase for members of public service pension schemes. These savings were to be introduced incrementally over the three years starting April 2012, on a 40%:80%:100% basis.
35. The proposed contribution increases reflect the principles set out by Government and are designed so that those earning the most pay the highest percentage point increase. The proposals also protect the lowest earners and are designed to encourage maximum participation within the scheme.

The Proposal

36. In July 2011 the Department consulted on proposed Year 1 changes to contribution rates for members of the Teachers’ Pension Scheme (TPS). Following the consideration of responses to that consultation, tiered contributions were introduced into the TPS from April 2012.
37. In developing the tiered structure the Department worked closely with other public service schemes and HM Treasury to ensure that the design of contribution increases reflects the circumstances of the TPS membership, and

considered the impact on different areas of the membership. The contribution increases reflected the principles set out by Government and were designed so that those earning the most pay the highest percentage point increase. The tiers also protect the lowest earners and are designed to encourage maximum participation within the scheme.

38. On 26 October 2012, the Department launched a consultation on proposed Year 2 member contribution rates. Following discussion with Trade Unions and employer representatives, this second phase of tiered contribution introduced an additional tier. The introduction of an 8th tier was to provide additional protection middle earners and ensure a fair distribution of costs.

Implementation

39. The proposed contribution rates for 2014-15, on which the Department consulted, are as follows:

Pensionable annual earnings in relevant year (£)		Contribution Rate in 2013-14	Increase (against 2012-13)
Lower	Upper	Tier %	Tier %
Below	£14,999	6.4%	0.0%
£15,000	£25,999	7.2%	0.2%
£26,000	£31,999	8.3%	0.4%
£32,000	£39,999	9.5%	0.7%
£40,000	£44,999	9.9%	0.7%
£45,000	£74,999	11.0%	0.9%
£75,000	£99,999	11.6%	1.0%
£100,000		12.4%	1.2%

40. In developing this structure the Department has paid particular attention to concerns that increases in member contribution rates may result in a higher level of opt-outs. The Department has, since April 2012, been monitoring the level of opt-outs from the TPS. Analysis of opt-out rates has shown no evidence to suggest an increase in member opt-out as a result of contribution increases.
41. The Department's proposal, as set out in the table above, is to roll forward the contributions structure as implemented in April 2013, with increases in the contribution rates to secure the final year of savings.
42. This structure will result in an average contribution increase of 0.6 percentage points on the rates implemented in 2013.

43. A member earning £35,000 in 2014-15 would therefore see a reduction in annual take home pay of £174 while a member earning £50,000 in the same period would see a reduction of £276.

Policy 2 - Consultation Questions

Question 5: Do you agree that the Department's proposed structure will satisfy the government's commitment for the protection of the low paid and the maximum increase for higher earners.

Question 6: Are there any consequences of the proposed contribution tiers that you consider have not been addressed?

In developing the proposed member contribution tier structure, the Department has had due regard to our equality responsibilities as set out in the Equalities Act 2010.

Question 7: Do you consider that there are equality issues that will result in any protected groups being disproportionately affected by the proposed contribution structure? If so, what do you consider to be the disproportionate effect?

Consultation Responses

44. Although 47 consultation responses were received on the overall consultation, most respondents did not comment on Year 3 contributions. Of the 15 responses received in relation to Year 3 contributions, several chose not to answer some or all of the specific questions.
45. Of the 14 responses to question 5, seven disagreed that the proposed structure will satisfy the government's commitments, five agreed and two were not sure.
46. Of those that agreed, several stated that this response is to the specific question only and should not be seen as agreement to TPS reform to which they remain opposed. The majority of those that disagreed were individual respondents.
47. Concerns were raised that the structure does not protect the low paid, with one respondent noting that the lowest salary band for non-qualified teachers starts above the maximum of tier 1.
48. Of the 13 responses to question 6, seven indicated that they felt there were consequences that had not been addressed and six were not sure.
49. Areas suggested for further consideration included:
- contribution rates for part-time staff continuing to be set by full time equivalent (FTE) salary;
 - potential increase in opt out rates;
 - potential impact of the higher tiers on recruitment to leadership roles;
 - potential impact of tax relief on contributions on take home pay;
 - concerns that £45,000 - £75,000 band is too wide;

- potential disproportionate impact on London-based teachers; and,
- strong communications strategy required due to the proximity of the consultation to implementation and the potential impact on employers and members of late notification.

50. Of the 12 responses to question 7, five respondents were not sure if any protected groups would be disproportionately affected by the proposal, four highlighted concerns some groups would be affected and three were not aware of any equality issues.

51. Concerns were raised that the impact on part-time staff could disproportionately affect protected groups and that the Department's Equality Impact Assessment (EIA) was not adequate.

52. Respondents also took the opportunity to raise again opposition to reforms in general as part of this consultation. Issues raised included:

- affordability for members of contribution increases, especially in light of pay freezes and minimal pay rises;
- a valuation has not been carried out and no changes should be made until this is completed;
- erosion of member benefits; and,
- cap and share should be given a chance to deliver savings before contribution increases are imposed.

The Government's response

53. The Department acknowledges all the points raised, however, these were considered in depth when setting the contributions rates for the previous two years. The Department concluded, following consultation, that the approach taken provided the best fit between the need to increase contribution rates and suitably addressing these issues.

54. In designing the proposed tiering structure for 2014-15, The Department felt that it was appropriate, therefore, to maintain the structure used in 2013-14 to deliver the next 20% of the savings required by Treasury. This will help members' understanding of the changes and minimise the effect on employers when implementing the structure.

55. Unions and employers have been engaged in discussions throughout the design process.

56. On the specific points raised:

- it is the Department's view that appropriate protection has been provided for the low paid as those earning less than £15,000 have seen no increase in

contributions and those earning between £15,000 and £26,000 have seen a minimal increase of 0.2%;

- salary data used by The Department suggests that 727 members currently receive a FTE salary of under £15,000, and therefore the under £15,000 tier is still deemed appropriate;
- the Department continues to monitor opt out data and has seen no major increases as a result of reform, monitoring will continue throughout the reform process; and,
- the Department agrees that due to the proximity of the consultation to implementation it needs to ensure that the final structure is communicated clearly to employers and members and has worked with Teachers' Pensions that a robust communication strategy is in place;

57. The Department will, nevertheless, explore these areas further in regards to post-2015 contributions and will engage unions and employers in discussions on this subject. A further consultation will be undertaken on the structure of post 2015 contribution rates, later in the year.
58. The equality concerns detailed have previously been raised with the Department and have been considered within the Department's comprehensive assessment of equality related issues, as recorded in the published EIA and update to it. Further consideration has been given to those issues when determining contribution rates for Year 3, and the Department is of the view it has properly complied with its obligations under the public sector equality duty (PSED).
59. The PSED places an obligation on the Department to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.
60. The Department has used all available data and consulted widely on the proposals and equality impacts. The Department has acknowledged that no/limited data is available in respect of certain groups with protected characteristics and is taking steps with the scheme administrator to address this going forward. The absence of complete data does not render the equality analysis undertaken invalid and the Department has looked at the available evidence and views in reaching its conclusions.
61. Lord Hutton recommended in his interim report that increased longevity and the imbalance between employer and employee contributions are strong reasons to make short-term changes to pension contributions pending a more fundamental redesign of the schemes. He concluded that there is a clear rationale for increasing member contributions to ensure a fairer distribution of costs between taxpayers and members.

62. Ultimately, the Department considers that the proposals for reforming the TPS, including the increase in contributions, are fair and proportionate in delivering the policy intention, which is to make the scheme sustainable and fair to both members and the taxpayer. Within that, the Department is sure that the Scheme will still deliver good pensions for teachers which are amongst the best available.
63. The Department will however continue to ensure that the views put forward are fully considered in finalising the regulations/legislation.

Summary of Conclusions and Next Steps

64. The majority of responses, including those from unions, employers and members provided opposition to the policy of increasing pension contributions and the proposed amendments to the TPS regulations.
65. However, from the responses received, and the minor changes in opt-outs compared to the previous year, the Department has concluded that the proposals represent a reasonable and proportionate means of achieving its policy aim. Where concerns have been raised, the Department has provided responses. On the basis of the various arguments put forward, Department's proposals represent the maximum degree of protection it is reasonable to provide to lower paid teachers, when balanced against the consequential impact for the highest paid.
66. The Department will continue to monitor the position when considering the proposals for the tiering structure and distributional approach for post 2015.
67. A communications strategy is being implemented to ensure that all members, and employers, are clear on the benefits that the scheme provides. This will ensure that employees make fully informed decisions about participation in the scheme, with the aim of mitigating against the risk of significant increases in opt-out rates.
68. Appropriate amendments will be made to the Teachers' Pensions Regulations 2010 to give the proposed changes legal effect on 1 April 2014.

Policy Issue 3 – Marriage (Same Sex Couples) Act 2013

Background

69. The Department did not consult on changes to the regulations in respect of The Marriage (Same Sex Couples) Act 2013, but used the consultation as an opportunity to set out how proposed changes to the scheme regulations will be made as a consequence of the 2013 Act.

70. The Act received Royal Assent on 17 July 2013 and its main purpose is to enable same sex couples to marry.
71. Secondary legislation, made by the Department for Culture, Media and Sport (DCMS), within which the Government Equalities Office sits, will amongst others thing, amend the Teachers' Pensions Regulations 2010 to retain the current policy that public sector pension schemes treat same sex married couples as civil partners, and not as opposite-sex married couples. The provision will also govern the treatment of co-habiting couples.

Consultation Responses

72. Although this issue was included in the consultation document for information purposes only, of the 47 overall responses, 28 commented on this issue.
73. One consequence of the extension of marriage to same sex couples in England and Wales is that the TPS, along with other public service schemes, must provide for appropriate family and death benefits to survivors of such marriages. Survivor benefits for same sex married couples will generally be aligned with those of civil partners and widowers of a marriage of an opposite sex couple. In public service schemes, including the TPS, this means that benefits will generally be based on service accrued since 1988. Widows of a marriage of an opposite sex couple receive benefits on service accrued both prior to, and after, 1988.
74. All 28 responses raised survivor benefits as an issue for further consideration, arguing that the failure to equalize benefits with those available to widows is unfair. In the main these were raised in the form of a template letter downloaded from a union website, although a number used a similar template.

The Government's response

75. The provisions on benefits in public service pension schemes for the survivors of marriages of same sex couples, were subject to extensive debate in Parliament during the passage of the Marriage (Same Sex Couples) Bill. As the Act, which received Royal Assent on 17 July 2013, specifies the approach to be taken on survivor benefits, the TPS should be amended to comply with it.

However, the Government has committed to carry out a review of the differences in survivor benefits in occupational pensions schemes between different groups, and the costs and effects of making any changes to reduce or eliminate them. In accordance with section 16 of the Act, the Government will publish the outcome of the review of survivor benefits before 1 July 2014. The Department will consider whether any change to the TPS is needed in the light of that review.



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